

RONALD “TROY” HANEY,

Claimant,

v.

LAKE CITY POWER WASH
& ROOFING, INC.,

Employer,

and

STATE INSURANCE FUND,

Surety,

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Robert D. Barclay, who conducted a hearing in Coeur d'Alene (CDA) on January 26, 2005. Claimant, Ronald "Troy" Haney, was present in person and represented by James P. Hannon of CDA. Defendant Employer, Lake City Power Wash & Roofing, Inc., and Defendant Surety, State Insurance Fund, were represented by H. James Magnuson of CDA. The parties presented oral and documentary evidence. This matter was then continued for the submission of briefs and subsequently came under advisement on March 29, 2005. There were no post-hearing

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depositions.

ISSUES

The noticed issues to be resolved are:

1. Whether Claimant has complied with the notice limitations set forth in Idaho Code § 72-701 through Idaho Code § 72-706, and whether these limitations are tolled pursuant to Idaho Code § 72-604;
2. Whether Claimant suffered a personal injury arising out of and in the course of employment;
3. Whether Claimant's injury was the result of an accident arising out of and in the course of employment;
4. Whether Claimant is entitled to reasonable and necessary medical care as provided for by Idaho Code § 72-432, and the extent thereof; and,
5. Whether Claimant is entitled to temporary partial or temporary total disability (TPD/TTD) benefits, and the extent thereof.

ARGUMENTS OF THE PARTIES

Claimant, a roofer, argues he fell on an icy, slippery roof while carrying a bundle of shingles injuring himself. He further argues he did not realize the severity of his injury, that he continued to work until seeking medical care some 82 days after his fall, that Employer had knowledge of his injury, and that there is absolutely no evidence Employer was prejudiced in any manner by any claimed deficiencies in being given notice of his injury and accident. Claimant argues Employer did not want to file a workers' compensation claim in order to ensure that he received a refund on his insurance premium, preferring to pay for small claims directly. He seeks authorization for the

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further medical care and the diagnostic testing Dr. Esau has recommended for his industrial injury.

Defendants contend the only evidence Claimant slipped and fell on December 19, 2003, is his own testimony, and that the individuals he cites as witnesses emphatically deny any knowledge of the alleged accident. They further argue, that even if Claimant sustained an injury as a consequence of a December 19th accident, his claim is statutorily barred because he failed to give Employer notice of any accident within 60 days, and that his failure to give notice as soon as practical has prejudiced their ability to investigate his claim. Defendants also argue, that if there was an accident, Claimant has failed to provide any medical evidence to causally relate his injuries, which migrated from a knee injury to a back injury, to his accident, that he has not demonstrated a specific time period in which he is entitled to TTD benefits, and that he is now seeking to collect TTD benefits for periods in which he was either working for Employer or collecting unemployment benefits. They ask the Commission to dismiss Claimant's claim for compensation with prejudice.

Claimant counters Defendants have simply regurgitated their hearing argument in their brief that he is a liar while totally failing to refute the evidence he has presented, and that Employer, through threats and sketchy compliance with the workers' compensation laws, has taken a small claim into a drawn out matter that could have been resolved in a timely manner had he either paid Claimant's medical expenses and/or authorized the medical treatment requested by Dr. Esau for the injuries he suffered while employed. He further argues Employer has ignored the notice he gave him, hoping that his injury would resolve so that he would not have to report it and/or make any medical or time-loss payments in order to ensure that his insurance premiums would continue to remain stable.

EVIDENCE CONSIDERED

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The record in this matter consists of the following:

1. The testimony of Claimant and his witnesses, Silva E. Yates and Cheryn Tudor, and that of Employer Myron R. Farrar, his spouse and co-owner Lisa A. Farrar, his son and employee Shawn D. Farrar, and his employee Rodney Garcia taken at the January 26, 2005, hearing;
2. Claimant's Exhibits A through F admitted at the hearing; and,
3. Defendants' Exhibits D1 through D11 admitted at the hearing.

Included in the exhibits are the pre-hearing depositions of Claimant, Myron R. Farrar, Shawn D. Farrar, and Rodney Garcia.

After having fully considered all of the above evidence and the briefs of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

1. Claimant, a roofer, has worked on and off for Employer since the mid-1990s. On the morning of December 19, 2003, he, Rodney Garcia, and Shaun Farrar were offloading bundles of roofing shingles onto a roof from a conveyor belt mounted on a delivery vehicle. The three would then stack the bundles, weighing 80 to 90 pounds apiece, around the roof in places where the shingles would be needed. In trade terminology, they were "loading the roof."
2. Claimant maintains he slipped and fell while loading the roof, injuring his left knee, right hip, and low back/buttocks. He further maintains both Rodney Garcia and Shaun Farrar saw him fall, and that both asked him if he was all right immediately afterwards. Claimant also maintains he got up and continued to work the rest of the day.
3. Employer maintains he was periodically at the job site on December 19, 2003, and

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that Claimant never told him that he had either slipped and fell on the roof, or that he had suffered a work injury.

4. Claimant maintains he and Silva Yates attended Employer's Christmas party at a CDA pizza parlor, and that during the course of the party, he informed everyone that he believed he had been injured on the job, and lifted his shirt to show Employer and the others present that his back was "out of line several inches." (Transcript, p. 19). The party was held several days after the alleged slip and fall.

5. Silva Yates stated she observed a bruise on Claimant's right hip, and that he told her he had fallen and that his left knee was hurting him. She is Claimant's neighbor, a LPN, and a long-time friend. Ms. Yates also stated someone asked Claimant about his condition at Employer's Christmas party, and that he raised his shirt.

6. Employer maintained Claimant acted normal at the Christmas party, and that he did not hear any mention of a work accident or injury. He further maintained Claimant had been complaining about his back for years.

7. Claimant had seen Randall Priebe, D.C., for low back pain on February 20 and 24, 2003.

8. Rodney Garcia stated he never saw Claimant slip and fall on a roof while he was working with him, and that Claimant had never told him that he had slipped and fallen. He further stated he did not hear Claimant complaining about any injury at the Christmas party.

9. Shaun Farrar also stated he did not see Claimant slip and fall on a roof during December 2003, but that he, Claimant, and a third individual had fallen off a metal roof into a snow bank during the winter of 2002. He further stated he was unaware of Claimant's claim until around

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the time he started seeking medical care.

10. Claimant maintains he told Employer on January 28, 2004, that he had injured himself, and that Employer started “stonewalling” his claim by telling him to tough it out, and that if he didn’t work, he didn’t have a job. (Transcript, p. 22).

11. Employer maintains Claimant continued to work periodically on various roofing jobs until approximately March 8, 2004, when a particular job was completed. His testimony is supported by pay records and Claimant’s acknowledgement that he was receiving partial unemployment benefits during this time period.

12. On March 9, 2003, Claimant notified Employer over the telephone that he had slipped and hurt his knee, and that his condition was getting worse. Employer instructed him to seek medical care. Employer maintained this was the first time he was aware Claimant was claiming that he fell and injured himself at work.

13. Claimant later informed Employer that both Mr. Garcia and Shaun Farrar had witnessed his fall. Employer contacted both; neither could recall seeing Claimant fall.

14. Claimant saw Arlie E. Esau, M.D., at Hayden Lake Family Physicians (HLFP) on March 10, 2004. Dr. Esau noted Claimant had had pain in his left knee, hip and foot for about a month, and that it started after he slipped while carrying a bundle of shingles and landed on his right side, bruising his right lateral hip. After examining him, he opined Claimant’s symptoms were most consistent with left-sided sciatica, and that he likely had a disk herniation. Dr. Esau provided Claimant with samples of anti-inflammatory medications, prescribed physical therapy, and advised him not to roof for one to two months and to possibly change careers.

15. While Claimant was waiting to see Dr. Esau, Cheryn Tuder, the billing clerk at

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HLFP, contacted Lisa Farrar and asked where the bill should be sent. Ms. Farrar told Ms. Tudor to forward the bill to Employer. She testified she intended to forward the bill to Surety. Ms. Farrar did the paper work for Employer's workers' compensation claims.

16. Employer acknowledged paying several small medical bills for employee work-related injuries in the past in order to avoid having his workers' compensation insurance premiums increase.

17. Ms. Farrar met with Claimant on March 11, 2004, and with his input, filled out a Form 1. The Form 1 was received by Surety on March 15, 2004. In the accident description section, it was stated Claimant slipped and dropped a bundle of shingles on his left leg.

18. Claimant underwent six sessions of physical therapy at the Physical Therapy Center in Hayden from March 18, 2003, until April 2, 2004. The therapy had been prescribed by Dr. Esau.

19. Claimant returned to Dr. Esau on March 25, 2004. Dr. Esau noted continuing back and leg pain, instructed Claimant to continue with his physical therapy, and continued to restrict him from work.

20. On April 8, 2004, Dr. Esau noted that Claimant reported slight improvement. He diagnosed probable sciatica, and continued Claimant's conservative care. Dr. Esau also noted in an April 22, 2004, chart note that Claimant again reported improvement in his condition. His diagnosis was left-sided sciatica.

21. Claimant filed his Complaint with the Commission on April 27, 2004.

22. Claimant underwent physical therapy at LaCrosse Health & Rehabilitation Center from April 13, 2004, until May 18, 2004, at Dr. Esau's request. The therapy focused on Claimant's low back pain.

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23. Claimant also saw Dr. Esau on May 18, 2004, and reported slow improvement. Dr. Esau noted Claimant appeared well, and that his back and leg pain was improving.

24. After a June 3, 2004, visit, Dr. Esau gave Claimant a full-duty work release, noting that he was doing quite well, although he still had some tightening of the left buttock muscle area. Claimant returned to work as a roofer with another employer. He may have returned to work as early as mid-May 2004.

25. There have been a number of inconsistencies in Claimant's statements over the course of this matter; he is not a credible witness.

DISCUSSION

The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leaves no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996).

1. **Notice.** Idaho Code § 72-701 provides that "[n]o proceedings under this law [the Idaho Workers' Compensation Law] shall be maintained unless a notice of the accident shall have been given to the employer as soon as practicable but not later than sixty (60) days after the happening thereof" Idaho Code § 72-702 further provides that "[s]uch notice . . . shall be in writing; the notice shall contain the name and address of the employee, and shall state in ordinary language the time, place, nature, and cause of the injury . . . and shall be signed by him or by a person in his behalf." Idaho Code § 72-704, however, provides that "[w]ant of notice or delay in giving notice shall not be a bar to proceedings under this law if it is shown that the employer, his agent, or representative had knowledge of the injury . . . or that the employer had not been

prejudiced by such delay or want of notice.”

Thus, whether Claimant’s claim for compensation is barred by Idaho Code §§ 72-701 and 72-704 is dependent on whether (a) he gave Employer written notice within sixty days following his alleged injuries, and if he did not, (b) whether Employer had actual knowledge of his injuries within the sixty-day time frame, despite lack of written notice, or (c) whether Employer was prejudiced by the delay or want of notice. *Taylor v. Soran Restaurant, Inc.*, 131 Idaho 525, 527, 960 P.2d 1254, 1256 (1998). Oral notice to Employer may provide him with actual knowledge of an injury, thus obviating the necessity of a written notice. *Murray-Donahue v. National Car Rental Licensee Association*, 127 Idaho 337, 340, 900 P.2d, 1348, 1351 (1995).

(a) It is clear from the record, and the Referee so finds, that Claimant did not provide Employer with written notice of the alleged December 19, 2003, industrial accident within the 60 day time frame set forth in Idaho Code § 72-701. He did, however, verbally inform Employer of the alleged industrial accident over the telephone on March 9, 2004, some 80 days after the accident allegedly occurred. Claimant was told by Employer to seek medical care; he saw Dr. Esau the next day.

(b) Claimant asserts Employer had actual knowledge of the alleged accident since both Rodney Garcia and Shaun Farrar, his co-workers, witnessed the fall, and because he informed his co-workers at a December 2003 Christmas party, attended by Employer, and also Employer directly, during a January 28, 2004, conversation, about his condition. Claimant’s assertions, however, are contradicted by both Employer and his co-workers. There is also a question, that if Claimant informed Employer of his condition at either the Christmas party, or during the January conversation, why was he not told then to seek medical care as he was told during the March

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telephone conference. Moreover, if Employer was in the practice of paying medical bills for small claims, and was trying to avoid a premium increase as Claimant alleges, why did he not pay Dr. Esau's bill? Therefore, the Referee finds Employer did not have actual knowledge of Claimant's alleged industrial accident within the statutory 60 day period.

(c) In the alternative, Claimant argues that even if proper notice is not found, his delay in giving notice has not prejudiced Employer because Employer has not demonstrated any prejudice. Defendants counter notice of the alleged December 19, 2003, accident was not provided until March 9, 2004, when Claimant reported both the incident and his desire to seek medical care by telephone to Employer, and that this delay has prejudiced their ability to investigate and verify his claim as to whether an accident actually occurred.

Lack of prejudice can be demonstrated by showing that a claimant's injury was not aggravated by reason of the employer's inability to provide early diagnosis and treatment, or by showing that the employer was not hampered in making its investigation and preparing its case. The burden of proof is on Claimant to show there was no prejudice. He has not done so. Claimant's condition, by his own admission, deteriorated from the time of the alleged accident until the time he sought medical care. That is why he sought care in March 2004. Moreover, he has failed to show Employer was not hampered in his ability to investigate the alleged accident; he could have immediately questioned Claimant's co-workers and sent him to a physician for an evaluation. Therefore, the Referee finds that Employer has been prejudiced by Claimant's lack of timely notice.

Idaho Code § 72-604 provides in pertinent part that when an "employer has knowledge of an . . . injury . . . and willfully fails or refuses to file the report as required by section 72-602 (1) . . . the limitations prescribed in section 72-701 . . . shall not run against the claim of any person seeking

compensation until such report or notice shall have been filed.” Idaho Code § 72-602 (1) further provides in pertinent part that “[a]s soon as practicable but not later than ten days after the occurrence of an injury . . . requiring treatment by a physician or resulting in absence from work for one day or more, a report thereof shall be made in writing by the employer to the Commission in the form prescribed by the Commission.” Here, there is no evidence Claimant missed any work as a consequence of his alleged industrial injuries, or that he sought medical care for his alleged injuries until he notified Employer on March 9, 2003, that he needed to see a physician. Employer then filled out a Form 1 with Claimant’s assistance. The Referee finds Idaho Code § 72-604 does not toll the limitations set forth in Idaho Code § 72-701. Thus, The Referee concludes Claimant’s claim for compensation fails for want of notice.

2. **Injury/Accident (Causation).** The Idaho Workers' Compensation Law defines injury as a personal injury caused by an accident arising out of and in the course of employment. An accident is defined as an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury. An injury is construed to include only an injury caused by an accident, which results in violence to the physical structure of the body. Idaho Code § 72-102 (17).

A claimant must prove not only that he or she was injured, but also that the injury was the result of an accident arising out of and in the course of employment. *Seamans v. Maaco Auto Painting*, 128 Idaho 747, 751, 918 P.2d 1192, 1196 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. *Beardsley v. Idaho Forest Industries*, 127 Idaho 404, 406, 901 P.2d 511, 513 (1995). A claimant must provide medical testimony that supports a claim for compensation

to a reasonable degree of medical probability. *Langley v. State, Industrial Special Indemnity Fund*, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). “Probable” is defined as “having more evidence for than against.” *Fisher v. Bunker Hill Company*, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974). Magic words are not necessary to show a doctor’s opinion was held to a reasonable degree of medical probability; only their plain and unequivocal testimony conveying a conviction that events are causally related. *See, Jensen v. City of Pocatello*, 135 Idaho 406, 412-13, 18 P.3d 211, 217 (2001).

Claimant asserts he slipped and fell while loading a roof on the morning of December 19, 2003, thereby injuring himself. At the time, he was working as a roofer for Employer. Claimant further asserts Rodney Garcia and Shaun Farrar, his two co-workers on the project, were within feet of him when he fell, and that they both witnessed the fall. Both Rodney Garcia and Shaun Farrar denied seeing Claimant fall that morning. The burden is on Claimant to demonstrate that an accident occurred; he has failed to carry that burden. Thus, the Referee concludes Claimant has not shown he slipped and fell while loading a roof for Employer on the morning of December 19, 2003.

3. **Remaining Issues.** Based on the above conclusions, the remaining issues before the Commission in this matter are moot.

CONCLUSIONS OF LAW

1. Claimant has not demonstrated that he provided Employer with notice of his alleged December 19, 2003, industrial accident.

2. Claimant has not demonstrated that he slipped and fell while loading a roof for Employer on the morning of December 19, 2003.

3. Based on the above conclusions, the remaining issues before the Commission in this matter are moot.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Referee recommends the Commission adopt such findings and conclusions as its own, and issue an appropriate final order.

DATED This 15th day of April, 2004.

INDUSTRIAL COMMISSION

/s/ _____
Robert D. Barclay
Chief Referee

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of April, 2005, a true and correct copy of **Findings of Fact, Conclusions of Law, and Recommendation** was served by regular United States Mail upon each of the following:

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